

SENATE RECORD VOTE ANALYSIS

105th Congress

1st Session

Vote No. 45

April 17, 1997, 4:33 pm

Page S-3343 Temp. Record

CHEMICAL AND BIOLOGICAL WEAPONS THREAT REDUCTION/Passage

SUBJECT: Chemical and Biological Weapons Threat Reduction Act of 1997 . . . S. 495. Final passage, as amended.

ACTION: BILL PASSED, 53-44

SYNOPSIS: As passed, S. 495, the Chemical and Biological Weapons Threat Reduction Act, will require the implementation of a comprehensive domestic and international plan to reduce the threat posed to Americans by chemical weapons and biological weapons. For the first time, comprehensive criminal, civil, and other penalties will be imposed for the acquisition, possession, transfer, or use of chemical or biological weapons. The bill will reaffirm support for the elimination of the U.S. chemical weapons stockpile and will require the President to sanction countries that use chemical or biological weapons. The same conditions on aid to Russia will be imposed as were imposed in the fiscal year (FY) 1996 Defense Authorization. Key provisions are provided below.

- It will be unlawful to develop, produce, acquire, transfer, receive, stockpile, retain, own, possess, use, or threaten to use any chemical weapon or any biological weapon; a civil penalty of up to \$100,000 may be imposed for each violation; criminal fines and imprisonment for any term of years may be imposed for each violation; for a violation in which death results, the punishment will be life imprisonment or the death penalty; any person convicted will reimburse the United States for its court costs.
- Assets from a violation and proceeds resulting from a violation will be forfeited.
- Whoever knowingly uses or assists in the use of riot control agents as an act of terrorism will be subject to fines and imprisonment of up to 10 years.
- The President will be allowed to suspend or revoke the authority of anyone convicted of a biological or chemical weapons violation to export from the United States any goods or technology.
- The President will be required to impose sanctions on any foreign government that uses chemical or biological weapons; the sanctions will be imposed for at least 3 years; the President will be allowed to waive the imposition of sanctions if he certifies that imposing them would have a substantial negative impact upon the supreme national interests of the United States; the President will

(See other side)

YEAS (53)			NAYS (44)		NOT VOTING (3)	
Republicans (52 or 100%)	Democrats (1 or 2%)		Republicans (0 or 0%)	Democrats (44 or 98%)	Republicans (3)	Democrats (0)
Abraham	Hutchison	Lieberman		Akaka	Bond- ^{2AY}	
Allard	Inhofe			Baucus	Cochran- ²	
Ashcroft	Jeffords			Biden	Faircloth- ²	
Bennett	Kempthorne			Bingaman		
Brownback	Kyl			Boxer		
Burns	Lott			Breaux		
Campbell	Lugar			Bryan		
Chafee	Mack			Bumpers		
Coats	McCain			Byrd		
Collins	McConnell			Cleland		
Coverdell	Murkowski			Conrad		
Craig	Nickles			Daschle		
D'Amato	Roberts			Dodd		
DeWine	Roth			Dorgan		
Domenici	Santorum			Durbin		
Enzi	Sessions			Feingold		
Frist	Shelby			Feinstein		
Gorton	Smith, Bob			Ford		
Gramm	Smith, Gordon			Glenn		
Grams	Snowe			Graham		
Grassley	Specter			Harkin		
Gregg	Stevens			Hollings		
Hagel	Thomas					
Hatch	Thompson					
Helms	Thurmond					
Hutchinson	Warner					

EXPLANATION OF ABSENCE:

- 1—Official Business
- 2—Necessarily Absent
- 3—Illness
- 4—Other

SYMBOLS:

- AY—Announced Yea
- AN—Announced Nay
- PY—Paired Yea
- PN—Paired Nay

have to impose at least 5 sanctions from a list of possible sanctions provided in the bill (current law also requires the imposition of sanctions, but it allows less discretion in which sanctions to impose and gives the President more discretion not to impose any sanctions).

- Sanctions will not be removed unless the President certifies that the guilty government: has provided reliable assurances that it will not again use biological or chemical weapons; has agreed to onsite inspections or other means of verification; and is making restitution to those people affected by its use of chemical or biological weapons.

- The President will be required to freeze the assets under the United States' jurisdiction of any foreign government that uses chemical or biological weapons; the assets so seized will be used to compensate the victims of such use and to pay for any punitive damages assessed as the result of such use.

- It will be the policy of the United States: to continue close cooperation with other countries in the Australia Group (that group curbs the spread of chemical and biological weapons with export controls and other nonproliferation measures); to maintain or to increase export controls over toxic chemicals and their precursors, dual-use processing equipment, human, animal, and plant pathogens and toxins with potential biological weapons application, and dual-use biological equipment; to block any efforts to weaken existing Australia Group export controls and nonproliferation measures; and to work with other countries to devise and harmonize effective controls to curb the spread of chemical and biological weapons.

- Aid to Russia will be conditioned on the President certifying that it is making progress in meeting the commitments it has made to eliminate its chemical and biological weapons; alternatively, aid may be provided if the President certifies he is unable to determine if Russia is making progress on its commitments (this language is identical to the language used in the FY 1996 defense authorization bill).

- A report will be annually prepared on biological and chemical weapons proliferation; that report will name the individuals, groups, and countries that are involved in that proliferation.

- It is the sense of the Senate that the 1925 Geneva Protocol banning the use of poison gas in warfare should be strengthened to make it enforceable.

- U.S. funds will not be provided directly or indirectly to the Organization for the Prohibition of Chemical Weapons unless or until the Chemical Weapons Convention enters into force in the United States.

- It is the sense of Congress that the threat from chemical and biological weapons will grow, that the use of such weapons in future conflicts is likely, that neither the United States Armed Forces nor the armed forces of its allies are prepared for such use, that the lack of readiness of U.S. Armed Forces is due to an Administration decision to de-emphasize defenses against chemical and biological weapons, and that the United States should increase the emphasis on preparing defenses against chemical and biological weapons.

- The Secretary of Defense will be required to take those actions necessary to ensure that the U.S. Armed Forces are capable of carrying out required military missions despite the threat or use of chemical or biological weapons.

- It is the sense of Congress that the President should reconsider the extension of the United States' negative security assurances (which state that the United States will not use nuclear weapons against nonnuclear countries unless they attack the United States in alliance with nuclear countries), and should determine the appropriate range of nuclear and nonnuclear responses to the use of chemical and biological weapons against the United States, its citizens, its armed forces, its allies, and third parties.

- The current policy on riot control agents will be maintained; that policy allows chemicals such as tear gas to be used in certain situations, such as when combatants and noncombatants are intermingled.

Those favoring final passage contended:

The Chemical Weapons Convention that the Senate will soon consider is extremely controversial. The same cannot be said for the provisions of this bill. This bill will close loopholes in current law on chemical and biological weapons, and it will strengthen domestic law enforcement, international control, and military defenses. The main argument that Senators have raised is that they have not had time to read and understand it fully. This argument is weak--many sections of the bill have been debated for years, other sections have been written by the Federal Bureau of Investigation under the Clinton Administration, and other sections make only small, easy-to-understand, noncontroversial changes to current law. It does not take a great deal of time to understand any of these provisions.

Still, we agree with those of our colleagues who say that they would like more time to debate the bill, because we would greatly enjoy defending it, item by item. Are our colleagues against strengthening export controls on biological and chemical weapons? Are they against strengthening our military's defenses against such weapons? Are they against increasing the penalties for making, possessing, or using chemical or biological weapons against Americans? In the limited amount of time that we have had for debate, our colleagues have questioned some of the bill's provisions. We have given them brief answers, but with more time we could prove beyond any doubt the complete merit of this bill.

Unfortunately, we do not have more time for debate because the Clinton Administration wants us to follow its timetable for the

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consideration of the Chemical Weapons Convention. We agreed to that timetable on the condition that we first consider S. 495. In our opinion, that convention is unenforceable, and in fact contains provisions that will result in greater proliferation of chemical and biological weapons. Ratifying it before passing S. 495 would lead to a false sense of security and the needed actions pursued by this bill would likely not be taken. Therefore, we considered it a reasonable demand that we consider this substantive bill first. We also agreed to limit debate on this bill not because we wanted to limit debate, but because the Clinton Administration wanted us to finish it quickly so that debate could begin on the Chemical Weapons Convention. Further, though we believe that the Chemical Weapons Convention is flawed, we agreed to limit debate on it as well, again in order to accommodate the President.

Our colleagues say that there is nothing wrong with limiting the debate on the Conventional Weapons Convention because it has been debated through three administrations and has been the subject of several congressional hearings, and that Senators are therefore intimately familiar with its contents. At the same time, they say it is a terrible matter to limit debate on this bill because they say they doubt that more than 5 Senators could describe its contents. Interestingly, these very same Senators have then gone on in this debate to criticize S. 495's supposedly weak and slapdash definition of banned chemicals. This criticism is interesting because the definition is the very definition that is contemplated by the Chemical Weapons Convention. After all the years they tell us they have been intently studying this convention, they still do not seem to know what it contains. Perhaps it does not matter how long legislation has been around; perhaps it is always hard to find 5 Senators who can describe the contents of a bill, or treaty, in detail. Of course, it is not necessary for Senators to understand the minutiae of every bill that reaches the floor. They need only understand the issues at hand; they need to see the forest, not each little tree.

On the matter of substance, every Senator should support S. 495. Every Senator supports the elimination of chemical and biological weapons, every Senator supports strong laws against those weapons, every Senator supports strong export control laws to stop the proliferation of those weapons, and every Senators supports strong defenses against those weapons. There may be political reasons for opposing this bill, but those reasons do not change the fact that substantively this bill is good for America and should be supported.

Those opposing passage contended:

We will be blunt. S. 495 is being offered as a cover vote for Senators who want to vote against the Chemical Weapons Convention but who are afraid that it will make them look like they support the existence of biological and chemical weapons. Those Senators are successful politicians--if they were not, they would not be Senators--and they are of course correct that this vote will give them some political cover from the charge that they failed to eliminate biological and chemical weapons from the world when they were given the opportunity. The political reality is that they will probably be hit with that charge, which of course will be unfair because nobody wants biological and chemical weapons to exist. Our colleagues who oppose the Chemical Weapons Convention do so because they have an honest disagreement with those of us who support it--we believe it will work, while our colleagues believe it will probably make matters worse. The Chemical Weapons Convention, as it has been negotiated, must be approved by the end of this month if it is going to be approved at all. Opponents of the Convention have used this fact as leverage. They have refused to allow it to be brought to the floor for consideration unless we agreed to let them bring this bill to the floor first. We have acceded to this demand as a means of guaranteeing that the convention will be considered in time.

Though we understand and sympathize with our colleagues' motive, we cannot support S. 495 for two main reasons. First, we do not want to give credence to the claim that it is an alternative to passing the Chemical Weapons Convention. Second, we have no way of knowing what it contains. We have no doubt that many of its provisions are meritorious, because we have great respect for the abilities of its author, but at the same time we are concerned that it may have provisions which we cannot support. We really cannot say for certain, because it is a 70-page bill that we have only had a very short time to consider. No hearings have been held on it, and we doubt more than 5 Senators have even had a chance to examine it. Just a quick glance at some of its sections raise questions. For instance, we wonder why it is necessary to change the law criminalizing chemical weapons use, when we just passed that law last year as part of the Terrorism Prevention Act. Similarly, we wonder how our colleagues arrived at their list of chemicals that will be controlled by this Act, and, more importantly, we wonder if they have given serious enough consideration to the ramifications of the definition they have used. Questions that come to mind include whether listing certain toxic chemicals implies that equally toxic chemicals that exist now are not covered by the bill. Also, we note that this definition is less strict than the current-law definition of covered chemicals. It appears to us, at first glance, as though this provision actually will make laws against chemical weapons weaker instead of stronger. We do not know for sure, because our colleagues are rushing this bill through the Senate.

Those of our colleagues who intend to vote against the Chemical Weapons Convention need political cover. They have good reason to want that cover. However, we cannot join them in passing S. 495 because we have not had enough time to examine it, and we are therefore not sure if all of its parts are acceptable. This bill should be defeated.